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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No.

11 ALBINO JOMINAR FIGUERRES ARDE
1744 Kate Court
12 West Covina, CA 91792
Registered Nurse License No. 522426

ACCUSATION 2008-304

13 Respondent.
14

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16 Complainant alleges:
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18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
21 (Board), Department of Consumer Affairs.

22 2. On or about June 6, 1996, the Board issued Registered Nurse License
23 Number 522426 to Albino Jominar Figuerres Arde (Respondent). The Registered Nurse License
24 was in full force and effect at all times relevant to the charges brought herein and expired on
25 March 31, 2008, unless renewed.

26
27 JURISDICTION

28 3. This Accusation is brought before the Board, Department of Consumer

1 Affairs, under the authority of the following laws. All section references are to the Business and
2 Professions Code (Code) unless otherwise indicated.

3 STATUTORY PROVISIONS

4 4. Section 2750 of the Code provides in pertinent part that the Board may
5 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
6 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7 5. Section 2764 of the Code provides in pertinent part that the expiration of a
8 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
9 against the licensee or to render a decision imposing discipline on the license.

10 6. Section 490 of the Code states:

11 "A board may suspend or revoke a license on the ground that the licensee has
12 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
13 duties of the business or profession for which the license was issued. A conviction within the
14 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
15 contendere. Any action which a board is permitted to take following the establishment of a
16 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
17 been affirmed on appeal, or when an order granting probation is made suspending the imposition
18 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
19 Penal Code."

20 7. Section 2761 of the Code states:

21 "The board may take disciplinary action against a certified or licensed nurse . . .
22 for any of the following:

23 "(a) Unprofessional conduct

24 . . .

25 "(f) Conviction of a felony or of any offense substantially related to the
26 qualifications, functions, and duties of a registered nurse, in which event the record of the
27 conviction shall be conclusive evidence thereof."

28 8. Section 2762 of the Code states:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“(a) Obtain or possess in violation of law, . . . or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself . . . any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, . . . to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.”

9. Section 118, subdivision (b) provides that the suspension, expiration, forfeiture, surrender or cancellation of a license shall not deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee during any period in which the license may be renewed, restored, reissued, or reinstated.

10. Section 125.3 of the Code provides in pertinent part that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”

FIRST CAUSE FOR DISCIPLINE

(Conviction for Substantially Related Crime)

12. Respondent is subject to disciplinary action under Code sections 490 and

1 2761, subdivision (f), as defined in California Code of Regulations, title 16, section 1444, in that
2 Respondent was convicted of a crime for actions which represent his present or potential
3 unfitness as a registered nurse to practice in a manner consistent with the public health, safety, or
4 welfare, as follows:

5 a. On or about August 30, 2006, in a criminal proceeding entitled *People v.*
6 *Arde*, in Los Angeles County Superior Court, Case No. 6JB06633, Respondent was convicted on
7 a plea of nolo contendere entered on or about August 23, 2006 to violating Health and Safety
8 Code section 11377, subdivision (a) (possession of the controlled substance of
9 methamphetamine), a misdemeanor.

10 b. The circumstances of the conviction are that on or about August 21, 2006,
11 Respondent was arrested in an area known for a high amount of narcotic activity. He told the
12 arresting officer that he was waiting for a taxi, but he was in the rear alley behind a gas station,
13 hidden from view from the street. One of Respondent's pants pockets contained a plastic baggy
14 containing a crystal-like substance later determined to be methamphetamine.

15
16 SECOND CAUSE FOR DISCIPLINE

17 (Conviction for Substantially Related Crime)

18 13. Respondent is subject to disciplinary action under Code sections 490 and
19 2761, subdivision (f), as defined in California Code of Regulations, title 16, section 1444, in that
20 Respondent was convicted of two crimes for actions which represent his present or potential
21 unfitness as a registered nurse to practice in a manner consistent with the public health, safety, or
22 welfare, as follows:

23 a. On or about April 1, 2005, in a criminal proceeding entitled *People v.*
24 *Arde*, in Los County Superior Court, Case No. KA067800, Respondent was convicted on two
25 guilty pleas entered January 31, 2005 on Count 1, violating Health and Safety Code section
26 11377, subdivision (a) (possession of the controlled substance of methamphetamine), a felony,
27 and Count 2, violating Health and Safety Code section 11364 (possession of a pipe/paraphernalia
28 used for smoking the controlled substance of methamphetamine), a misdemeanor..

b. The circumstances of the conviction are that on or about September 7, 2004, Respondent bought three bags of methamphetamine and a smoking pipe. On or about September 8, 2004, a law enforcement officer noticed that Respondent appeared anxious, his reflexes were exaggerated and he could not stand still, all behaviors indicative of being under the influence of a controlled narcotic stimulant. Respondent told the officer that he had used methamphetamine on the morning of the previous day. In Respondent's pants pockets, the officer subsequently found a glass pipe with brown and white residue, and three bags containing a crystalline substance that tested positive for methamphetamine.

THIRD CAUSE FOR DISCIPLINE

(Conviction for Substantially Related Crime)

14. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), as defined in California Code of Regulations, title 16, section 1444, in that Respondent was convicted of a crime for actions which represent his present or potential unfitness as a registered nurse to practice in a manner consistent with the public health, safety, or welfare, as follows:

a. On or about December 27, 2004, in a criminal proceeding entitled *People v. Arde*, in San Bernardino County Superior Court, Case No. MWV092466, Respondent was convicted on a guilty plea on Count 2, violating Health and Safety Code section 11364 (possession of an opium pipe), a misdemeanor.

b. The circumstances of the conviction are that on or about September 21, 2004, Respondent was stopped for the traffic infraction of throwing a cigarette from his motor vehicle (Veh. Code., § 23222, subd. (b)). The arresting officer found a glass smoking pipe.

FOURTH CAUSE FOR DISCIPLINE

(Conviction for Substantially Related Crime)

15. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), as defined in California Code of Regulations, title 16, section 1444, in that

1 Respondent was convicted of a crime for actions which represent his present or potential
2 unfitness as a registered nurse to practice in a manner consistent with the public health, safety, or
3 welfare, as follows:

4 a. On or about January 5, 2005, in a criminal proceeding entitled *People v.*
5 *Arde*, in San Bernardino County Superior Court, Case No. MSB080346, Respondent was
6 convicted on a guilty plea to violating Health and Safety Code section 11377, subdivision (a)
7 (possession of the controlled substance of methamphetamine), a misdemeanor.

8 b. The circumstances of the conviction are that on or about November 12,
9 2004, Respondent offered to share methamphetamine with an undercover safety officer, which
10 led to Respondent's arrest. Respondent's pants pockets contained a glass pipe commonly used to
11 smoke methamphetamine, and a plastic baggy containing a white crystalline substance that tested
12 positive for methamphetamine.

13
14 FIFTH CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct)

16 16. Respondent is subject to disciplinary action under Code section 2761,
17 subdivision (a) in that Respondent committed acts of unprofessional conduct, which are set forth
18 in paragraphs 12 through 15 above, and which are incorporated by reference.

19
20 SIXTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct)

22 17. Respondent is subject to disciplinary action under Code section 2762,
23 subdivision (b) in that Respondent has periodically used the controlled substance of
24 methamphetamine since at least 2002. Respondent's use of methamphetamine is to an extent or
25 in a manner dangerous or injurious to himself, other person(s) and/or the public, and his
26 methamphetamine use is to the extent that it impairs his ability to safely practice nursing. This
27 use includes but is not limited to:

28 a. Respondent's use on or about September 7, 2004, as set forth in

1 paragraph 10.b. above and incorporated by reference;

2 b. Respondent's use of methamphetamine prior to driving a motor
3 vehicle on or about September 21, 2004; and

4 c. Respondent's use on or about August 21, 2006, about less than two
5 and a half months after Respondent stated on or about June 9, 2006 that he no longer had a
6 methamphetamine problem.

7
8 PRAYER

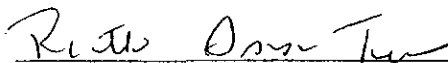
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 522426, issued
12 to Respondent.

13 2. Ordering Respondent to pay the Board the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.
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17 DATED: 4/23/08

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19 
20 RUTH ANN TERRY, M.P.H., R.N.
21 Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant

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